

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

SUE MARIE GRAHAM,)
vs. Plaintiff,) Case Number CIV-13-870-C
CAROLYN COLVIN,)
Acting Commissioner of the Social)
Security Administration,)
Defendant.)

ORDER ADOPTING REPORT AND RECOMMENDATION

On April 30, 2014, United States Magistrate Judge Gary Purcell issued his Report and Recommendation (“R&R”) in this action in which Plaintiff seeks review of the denial of her application for disability insurance benefits. Judge Purcell recommended the Commissioner’s decision be affirmed. Plaintiff’s objection to the R&R was timely filed, and the Court reviews the matter de novo.

Plaintiff’s objections to the R&R argues that Judge Purcell engaged in impermissible post hoc reasoning. According to Plaintiff, Judge Purcell placed significance on the fact that there was a lack of any record of persistent medical treatment for Plaintiff’s wrist or hand. Plaintiff argues that neither the Administrative Law Judge (“ALJ”) nor the state agency consultant made this factual finding. Thus, Plaintiff asserts, Judge Purcell improperly supplied a finding or observation that was missing from the record.

The Court finds no support for Plaintiff’s claim that Judge Purcell engaged in improper post hoc justification. The Tenth Circuit has held that it is improper for a reviewing court to “draw factual conclusions on behalf of the ALJ.” Drapeau v. Massanari, 255 F.3d

1211, 1214 (10th Cir. 2001) (quoting Prince v. Sullivan, 933 F.2d 598, 603 (7th Cir. 1991)).

However, the Court finds no evidence the R&R engages in this activity. Rather, the R&R noted Plaintiff's argument that the ALJ failed to properly consider her wrist and hand impairment. Judge Purcell then reviewed the medical evidence considered by the ALJ and noted that evidence did not contradict the ALJ's determination that Plaintiff was capable of performing work. To the extent the R&R expounds on the medical records, it does not do so by reaching factual conclusions beyond those reached by the ALJ.

Accordingly, the Court ADOPTS the Report and Recommendation (Dkt. No. 17) issued by the Magistrate Judge on April 30, 2014, in its entirety, and AFFIRMS the decision of the Commissioner. A judgment shall issue accordingly.

IT IS SO ORDERED this 16th day of June, 2014.



ROBIN J. CAUTHRON
United States District Judge